

Amendment No. 1 to HB0071

**Briley
Signature of Sponsor**

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Clerk _____
Comm. Amdt. _____

AMEND SB771

HB 71

by deleting all language after the enacting clause and by substituting instead the following:

SECTION 1. This act shall be known and may be cited as the "Tennessee Human Trafficking Act of 2007".

SECTION 2. Tennessee Code Annotated, Section 39-13-301, is amended by adding the following appropriately numbered new items:

() "Blackmail" means threatening to expose or reveal the identity of another or any material, document, secret or other information that might subject a person to hatred, contempt, ridicule, loss of employment, social status or economic harm.

() "Coercion" means:

(A) Causing or threatening to cause bodily harm to any person, physically restraining or confining any person, or threatening to physically restrain or confine any person;

(B) Exposing or threatening to expose any fact or information that if revealed would tend to subject a person to criminal or immigration proceedings, hatred, contempt, or ridicule;

(C) Destroying, concealing, removing, confiscating, or possessing any actual or purported passport or other immigration document, or any other actual or purported government identification document, of any person; or

(D) Providing a controlled substance, as defined by § 39-17-402(4), to a person.

() "Deception" means:

(A) Creating or confirming another person's impression of an existing fact or past event which is false and which the accused knows or believes to be false;

(B) Maintaining the status or condition of a person arising from a pledge by that person of personal services as security for a debt, if the value of those services as reasonably assessed is not applied toward the liquidation of the debt or the length and nature of those services are not respectively limited and defined, or preventing a person from acquiring information pertinent to the disposition of such debt; or

(C) Promising benefits or the performance of services which the accused does not intend to deliver or perform or knows will not be delivered or performed. Evidence of failure to deliver benefits or perform services standing alone shall not be sufficient to authorize a conviction under this part.

() "Financial harm" includes extortion as defined by § 39-14-112, criminal violation of the usury laws as defined by § 47-14-112 or employment contracts that violate the Statute of Frauds as defined by § 29-2-101(b).

() "Forced labor or services" means labor or services that are performed or provided by another person and are obtained or maintained through the defendant's:

(A) Causing or threatening to cause serious harm to any person;

(B) Physically restraining or threatening to physically restrain another person;

(C) Abusing or threatening to abuse the law or legal process;

(D) Knowingly destroying, concealing, removing, confiscating or possessing any actual or purported passport or other immigration document, or any other actual or purported government identification document, of another person;

(E) Blackmail; or

(F) Causing or threatening to cause financial harm to in order to exercise financial control over any person.

() "Labor" means work of economic or financial value.

() "Maintain" means, in relation to labor or services, to secure continued performance thereof, regardless of any initial agreement on the part of the victim to perform such type of service.

() "Obtain" means, in relation to labor or services, to secure performance thereof.

() "Services" means an ongoing relationship between a person and the defendant in which the person performs activities under the supervision of or for the defendant.

() "Sexually explicit conduct" means actual or simulated:

(A) Sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex;

(B) Bestiality;

(C) Masturbation;

(D) Lewd exhibition of the genitals or pubic area of any person;

(E) Flagellation or torture by or upon a person who is nude;

(F) Condition of being fettered, bound, or otherwise physically restrained on the part of a person who is nude;

(G) Physical contact in an act of apparent sexual stimulation or gratification with any person's unclothed genitals, pubic area, or buttocks or with a female's nude breasts;

(H) Defecation or urination for the purpose of sexual stimulation of the viewer; or

(l) Penetration of the vagina or rectum by any object except when done as part of a recognized medical procedure.

(5) "Sexual servitude" means:

(A) Any sexually explicit conduct as defined in subdivision (4) of this section for which anything of value is directly or indirectly given, promised to, or received by any person, which conduct is induced or obtained by coercion or deception or which conduct is induced or obtained from a person under the age of eighteen (18) years; or

(B) Any sexually explicit conduct as defined in subdivision (4) of this section which is performed or provided by any person, which conduct is induced or obtained by coercion or deception or which conduct is induced or obtained from a person under eighteen (18) years of age.

SECTION 3. Tennessee Code Annotated, Title 39, Chapter 13, Part 3, is amended by adding the following new sections:

§ 39-13-307.

(a) A person commits the offense of involuntary labor servitude who knowingly subjects, or attempts to subject, another person to forced labor or services by:

(1) Causing or threatening to cause physical harm to such person;

(2) Physically restraining or threatening to physically restrain such person;

(3) Abusing or threatening to abuse the law or legal process;

(4) Knowingly destroying, concealing, removing, confiscating or possessing any actual or purported passport or other immigration document, or any other actual or purported government identification document, of such person; or

(5) Using blackmail, or using or threatening to cause financial harm for the purpose of exercising financial control over such person.

(b) In addition to any other amount of loss identified or any other punishment imposed, the court shall order restitution to the victim or victims in an amount equal to the greater of:

(1) The gross income or value to the defendant of the victim's labor or services; or

(2) The value of the victim's labor as guaranteed under the minimum wage and overtime provisions of the Fair Labor Standards Act (FLSA) or the minimum wage required in Tennessee, whichever is higher.

(c) Nothing in this section shall be construed as prohibiting the defendant from also being prosecuted for the theft of the victim's labor or services by involuntary servitude or for any other appropriate criminal statute violated by the defendant's conduct.

(d)

(1) Involuntary servitude is a Class C felony.

(2) Involuntary servitude is a Class B felony if:

(A) The violation resulted in the serious bodily injury or death of a victim;

(B) The period of time during which the victim was held in servitude exceeded one (1) year, or

(3) The defendant held ten (10) or more victims in servitude at any time during the course of the defendant's criminal episode.

§ 39-13-308.

(a) A person commits the offense of trafficking persons for forced labor or services who knowingly:

(1) Recruits, entices, harbors, transports, provides, or obtains by any means, or attempts to recruit, entice, harbor, transport, provide, or

obtain by any means, another person, intending or knowing that the person will be subjected to involuntary servitude; or

(2) Benefits, financially or by receiving anything of value, from participation in a venture which has engaged in an act described in § 39-13-307.

(b) In addition to any other amount of loss identified or any other punishment imposed, the court shall order restitution to the victim or victims in an amount equal to the greater of:

(1) The gross income or value of the benefit received by the defendant as the result of the victim's labor or services; or

(2) The value of the victim's labor as guaranteed under the minimum wage and overtime provisions of the Fair Labor Standards Act (FLSA) or the minimum wage required in Tennessee, whichever is higher.

(c) Trafficking for forced labor or services is a Class C felony.

§ 39-13-309

(a) A person commits the offense of trafficking a person for sexual servitude when that person knowingly subjects or maintains another in sexual servitude or knowingly recruits, entices, harbors, transports, provides, or obtains by any means another person for the purpose of sexual servitude.

(b) Trafficking for sexual servitude is a Class B felony.

§ 39-13-310. Each violation of §§ 39-13-308 and 39-13-309 shall constitute a separate offense.

§ 39-13-311. A corporation may be prosecuted for an violation of §§ 39-13-308 and 39-13-309 for an act or omission constituting a crime under this part only if an agent of the corporation performs the conduct which is an element of the crime while acting within the scope of his or her office or employment and on behalf of the corporation and the commission of the crime was either authorized, requested,

commanded, performed, or within the scope of his or her employment on behalf of the corporation or constituted a pattern of illegal activity that an agent of the company knew or should have known was occurring."

SECTION 4. Tennessee Code Annotated, Section 39-13-303, is amended by deleting subsection (a) and substituting instead the following:

(a) Kidnapping is false imprisonment as defined in § 39-13-302, under circumstances exposing the other person to substantial risk of bodily injury.

SECTION 5. This act shall take effect July 1, 2007, the public welfare requiring it.